*Silz* v. *Hesterberg,* 211 U. S. 31; *Murphy* v. *California,* 225 U. S. 623. The step taken by the court in its decision in the instant case was to be anticipated, in view of the recent decisions interpreting the WEBB-KENYON ACT.

ESPIONAGE ACT—POST OFFICE—NON-MAILABLE MATTER—SEDITIOUS PUBLICATIONS.—On an appeal from an interlocutory order granting a temporary injunction commanding the defendant, postmaster of the city of New York, to transmit the plaintiff's publication, "The Masses", through the mails, *held,* that it could not be said that the defendant was not warranted in excluding the journal under the authority of the ESPIONAGE ACT OF JUNE 15, 1917. *Masses Pub. Co.* v. *Patten,* 246 Fed. 24 (Cir. Ct. App., Nov. 2, 1917).

This decision of the Circuit Court of Appeals has the effect of reversing the decision of the District Court, granting a preliminary injunction, 16 MICH. L. REV. 131. The court in the instant case held the act to be constitutional, a proper exercise of the police power of the government; that, by it, Congress authorized and directed the Postmaster General not to transmit certain matter by mail, and to determine whether a particular publication is non-mailable under the terms of the law, thus requiring him to use judgment and discretion in so determining, and making his decision conclusive before the courts, save where there appears to be a clear abuse of discretion; and that no such abuse of discretion appeared in the instant case. The Circuit Court expressly repudiated the decision of the District Court, to the effect that any action other than a *direct* advocacy of resistance to the existing law is not a violation of the ESPIONAGE ACT, holding that "if the natural and reasonable effect of what is said is to encourage resistance to a law, and the words are used in an endeavor to persuade resistance, it is immaterial that the duty to resist is not mentioned, or the interests of the persons addressed in resistance are not suggested".

EVIDENCE — COMPETENCY OF WITNESSES — CRIMINAL TRIALS IN FEDERAL COURTS.—Upon the trial of defendants in the United States District Court for the Eastern District of New York for conspiring to buy and receive certain checks and letters stolen from duly authorized depositories of United States mail matter, objection was made to the competency of a witness for the Government who had been jointly indicted with defendants. The objection was based on the ground that this witness had previously pleaded guilty to the crime of forgery in one of the New York state courts and had served a sentence therefor, and, by the common law as administered in New York at the time of the enactment of the Federal Judiciary Act, these facts would have rendered the witness incompetent. The objection was overruled and the witness allowed to testify. *Held,* this ruling was correct. *Rosen et al.* v. *United States* (1918), 38 Sup. Ct. 148.

In *United States* v. *Reid et al.,* 12 How. 361, a case which came up from a Federal court in Virginia and upon which appellants in the instant case rely, the defendant attempted to call as a witness one who had been jointly indicted with him for a murder committed on the high seas. The court, in rejecting the testimony, held that the rules of evidence in force in the respective states when the United States Judiciary Act was passed were to gov-

ern the procedure in criminal trials in those courts, and that by the laws in force in Virginia at that time co-defendants were not competent witnesses. Practically the same doctrine was applied in *Logan* v. *United States,* 144 U. S. 263, in which case the court held that the laws of Texas in force when that state was admitted to the Union must determine the admissibility of evidence in criminal proceedings by the United States government within that jurisdiction. While some doubt was cast upon the authority of these cases by the decision in *Benson* v. *United States,* 146 U. S. 325, the precise point was not involved. In the instant case, however, the same situation was presented to the court as appeared in the *Reid Case.* Guided by the modern conviction that the truth is more likely to be arrived at by hearing the testimony of all persons of suitable understanding, leaving the credibility and weight of such testimony to the court or jury, than by excluding the witnesses as incompetent, Mr. Justice CLARKE felt justified in repudiating the doctrine of the *Reid Case,* and concluded "that the dead hand of the common law rule of 1789 should no longer be applied to such cases as we have here."

HABEAS CORPUS—CUSTODY OF CHILD—VISITING.—By deed executed in accordance with the statute, a father transferred his parental authority and custody over his three-year-old daughter to her grand-aunt, who formally adopted her. Upon the death of the child's mother, her grandmother brought suit for the custody of this child and also for that of her sister and two brothers, making the father and grand-aunt defendants. The court decreed that the three-year-old child should be left in the care and custody of her adoptive parents but required them to allow the child to visit one day in each month in the home of her grandmother, to whom the control of the other children was awarded. The defendant appealed on the gruond that the court had no authority to require these visits. *Held,* the court had such authority. *Kirby et ux.* v. *Morris* (Tex., 1917), 198 S. W. 995.

Appellants did not question the power of the court to award the custody *in toto* of the child as its best interests dictated, but objected to the limitation imposed upon their authority requiring visits to the child's grandmother. Similar limitations seem to be of rather common occurrence in divorce decrees, and, in fact, the court will rarely fail to order that the parents shall have access to their children at all reasonable times and places. CHURCH, HABEAS CORPUS, 449; *Wand* v. *Wand,* 14 Cal. 513; *Knoll* v. *Knoll,* 114 La. 703; *People* v. *Winston,* 65 App. Div. 231. Whether such provisions are made primarily with reference to the child's welfare, or in recognition of parental rights, may be an open question. The court in the instant case, basing their authority to issue this decree on the recognized power of courts to issue similar decrees in divorce proceedings, seem to assume that visiting is ordered in the interests of the children. A contrary conclusion is indicated by the case of *In re Succession of Reiss,* 46 La. Ann. 347, in which it was held that the court had no power to require a father to send his children to visit their grandmother, although it would seem to have been for their best interests.